

# *Newcastle Manor*

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## **Homeowners Association**

### **Summary of Dispute Resolution Procedures** (Civil Code §5310(a)(9), §5920 and §5965)

#### **Internal Dispute Resolution (IDR)**

California Civil Code §5900 to §5920 (Article 2 of the Davis-Stirling Act) apply to a dispute between the Association and a member involving their rights, duties, or liabilities under the Davis-Stirling Act, under the Nonprofit Mutual Benefit Corporation Law, or under the Association's governing documents. The following internal dispute resolution procedure is based upon §5915 of the Civil Code.

1. Either party to a dispute within the scope of Article 2 of the Davis-Stirling Act may invoke the following procedure:
  - a. The party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing.
  - b. A member of the Association may refuse a request to meet and confer. The Association may not refuse a request to meet and confer.
  - c. The Association's Board of Directors shall designate one or more Directors to meet and confer.
  - d. The parties shall meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in good faith in an effort to resolve the dispute. The parties may be assisted by an attorney or another person at their own cost when conferring.
  - E. If the parties agree on a resolution of the dispute, the agreement must be put in writing and signed by the parties, including the Director designated to represent the Association.
2. Any written agreement reached binds the parties and is judicially enforceable if it is signed by both parties and both of the following conditions are satisfied:
  - a. The agreement is not in conflict with law or the governing documents of the Association.
  - b. The agreement is either consistent with the authority granted by the Board of Directors to its designee(s), or the agreement is separately ratified by the Board of Directors.
3. An Association member shall not be charged a fee to participate in this process.

Civil Code §5900 states that the internal dispute resolution (IDR) process supplements, but does not replace, alternative dispute resolution (ADR) as a prerequisite to lawsuits. A summary of the ADR process follows.

If there is a dispute which requires IDR, pursuant to the statute, it is the owner's responsibility to review all of the provisions of the statute and/or seek independent legal counsel.

### **Alternative Dispute Resolution (ADR)**

Please be advised that California Civil Code §5925 *et seq.*, and §5900 *et seq.*, require Alternative Dispute Resolution (hereafter "ADR") as opposed to litigation in certain Association and owner disputes. "Failure of a member of the association to comply with the alternative dispute resolution requirements of Section 5930 of the Civil Code may result in the loss of the member's right to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law." This Notice merely provides a summary of the statute. If there is a dispute which may require ADR, pursuant to the statute, it is the owner's responsibility to review all of the provisions of the statute and/or seek independent legal counsel.

**PARTIES BOUND BY THE STATUTE:** The parties required to comply with the new statute are the Association (through the Board of Directors) and any owners of record.

**DISPUTES SUBJECT TO THE STATUTE (QUALIFYING DISPUTES):** Civil Code §5925 *et seq.*, provides that the Association and owners shall endeavor to submit disputes "related to the enforcement of the governing documents" to ADR. Where, however, an owner has a private dispute with another owner or a tenant, or the Board has a dispute with a third party such as a landscaper, such a dispute is not within the confines of the statute.

### **COMPLIANCE PROCEDURES**

1. **INITIATING PARTY.** The party pursuing the dispute, prior to filing any lawsuit, must serve on the other party a "Request for Resolution" including the following information and language:

- a. A brief description of the dispute;
- b. A request that the matter be submitted to ADR. A statement that the party receiving the Request for Resolution (responding party) is required to respond thereto within thirty (30) days of receipt or it will be deemed rejected;
- c. A copy of Civil Code §5925 *et seq.*

With respect to method of service, the statute provides that the Request for Resolution may be served either by personal delivery or by leaving a copy of the request at the responding party's home or business and thereafter mailing a copy of the request through first class Postage prepaid mail.

2. **RESPONDING PARTY.** Upon receipt of a Request for Resolution, the responding party, whether the Association or Owner, has thirty (30) days in which to either accept or reject the request. In the event no such response is received, the request is deemed rejected.

3. GENERAL PROCEDURE. Where the request is accepted, the parties must complete the ADR within ninety (90) days of receipt of the acceptance. However, the parties can stipulate in writing to extend this period.

In the event that a lawsuit is eventually commenced, the party filing must also file a certificate concerning the completion of the ADR. Where a lawsuit is commenced and ADR has not occurred, the filing party should file a certificate as to why ADR did not take place.

#### CONSEQUENCES FOR FAILURE TO COMPLY WITH THE LAW

In the event the "initiating" party proceeds to Court without complying with the provisions of this Section, the responding party can move the Court for an Order of Dismissal. As a result, it is important to seek independent counsel in the event that you, as an owner, have further questions.

Where a trial does go forward by virtue of the responding party's refusal to participate in dispute resolution, the Court will take such failure into consideration when ruling on payment of attorney's fees and costs.

Failure by any member of the Association to comply with any pre-filing requirements of Civil Code §5900 or §5925 may result in the loss of your rights to sue the Association or another member of the Association regarding enforcement of the governing documents.

Adopted by the Board of Directors

Date: May 3, 2021

Jeff Fox  
Jeffrey Fox, Secretary